

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**BECKLEY DIVISION**

JAMES P. SMITH,

Plaintiff,

v.

CIVIL ACTION NO. 5:06-cv-00990

USP - THI, et al.,

Defendants.

JAMES PRESTON SMITH,

Plaintiff,

v.

CIVIL ACTION NO. 5:06-cv-00992

THE UNITED STATES, et al.,

Defendants.

JAMES P. SMITH,

Plaintiff,

v.

CIVIL ACTION NO. 5:06-cv-00993

THE UNITED STATES,

Defendant.

## MEMORANDUM OPINION

By Standing Order entered on August 1, 2006, and filed in these cases on November 22, 2006, November 21, 2006, and November 21, 2006, respectively, these actions were referred to United States Magistrate Judge Mary E. Stanley for submission of proposed findings and a recommendation (PF&R). Finding that each case presents “similar issues and requests for relief,” (Docket 3 at 3), Magistrate Judge Stanley filed her PF&R [Docket 3] on March 26, 2007 addressing all cases and recommending that they be consolidated and resolved together.\* In that filing, the magistrate judge recommended that this Court **FIND** that each pending matter amounts to a request for collateral review without certification by the United States Court of Appeals for the Fourth Circuit, **FIND** that those requests are untimely and successive, **FIND** that Petitioner is barred from presenting these issues again via a petition for habeus corpus, **DISMISS** the petitions in each of the above-styled actions, and remove this matter from the Court’s docket.

The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). In addition, this Court need not conduct a *de novo* review when a party “makes general and conclusory objections that do not direct the Court to a specific error in the magistrate’s proposed findings and recommendations.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). Objections to the PF&R were due in these cases by January 9, 2007.

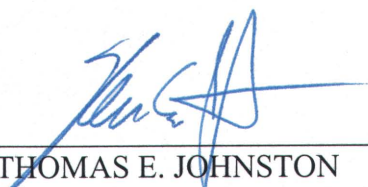
---

\* The magistrate judge also addressed Case No. 5:06-cv-00991 and Case No. 5:06-cv-01047, however, the Court previously dismissed those cases in a Judgment Order entered on July 6, 2007. For purposes of simplicity, the docket numbers included in this Judgment Order reference Case No. 5:06-cv-00990 unless otherwise noted.

On January 24, 2007, more than two weeks past the deadline for filing objections, Petitioner filed a document styled as a “Writ of Error, Writ of Certiorari, Writ of Habeus Corpus cum causa, Writ of Habeus Corpus ad testificandum, Writ of Privilege, Writ of Corum Novis” [Docket 4]. Not only is Petitioner’s filing untimely, it exhibits a complete failure to object to any proposed findings of fact or recommendation of the magistrate judge. The Court is not required to consider motions filed after the deadline for objections, especially when the motion is not addressed to the findings or recommendation contained in the PF&R. Thus, Petitioner’s objections, to the extent that the arguments contained in his filing may be construed as such, are **OVERRULED**, and the Court **ADOPTS** the recommendation contained in Magistrate Judge Stanley’s PF&R.

Accordingly, the Court hereby **DIRECTS** the Clerk to consolidate the above-styled civil actions and **DISMISSES** Petitioner’s Petition [Docket 1] in Case No. 5:06-cv-00990, Petition [Docket 1] in Case No. 5:06-cv-00992, and Petition for Writ of Mandamus [Docket 1] in Case No. 5:06-cv-00993. A Judgment Order will enter this day implementing the rulings contained herein.

ENTER: March 10, 2008



---

THOMAS E. JOHNSTON  
UNITED STATES DISTRICT JUDGE